

ORIGINAL**FILED**
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAR 20 2020 ★

BROOKLYN OFFICE

Hon. Eric R. Komitee
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201

United States Magistrate Judge Bloom
 United States District Court
 Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, NY 11201

Re: Capogrosso v. Gelbstein et al, No. 18-cv-2710 (E.D.N.Y.)
 Letter Motion Seeking an Order Requiring State's Attorney James Thomson to serve
 me by U.S. postal mail and seeking sanctions

Judge Komitee:

Judge Magistrate Bloom:

I, Mario H. Capogrosso, the pro se plaintiff in the above mentioned matter comes to you now seeking an appropriate order, compelling Attorney James Thompson, attorney for the States' defendants in my aforementioned Complaint CV-182710, to serve me via mail by the United States postal service all filings he makes on behalf of the State defendants and as necessary impose sanctions for his deliberate failure and refusal to do so.

1. Attorney James Thompson refuses to abide by J. Magistrate Bloom's order that I be allowed service via U.S. postal mail and not be served by electronic delivery

Attorney Thompson is refusing to serve me hard copies by U.S. postal mail of all documents he files in your Court concerning my Complaint.

The Court, J. Magistrate Bloom, has already ruled on this matter. J. Magistrate Bloom ruled that because I am a pro se plaintiff I do not have to consent to electronic service of the defendants' filings.

Attorney Thompson was present in the courtroom when J. Magistrate Bloom made this ruling.

I also made my position very clear to Attorney Thompson, before J. Magistrate Bloom, that I did not consent to electronic delivery and demanded that I receive all filings by mail through the U.S. postal service.

Attorney Thompson seeks to circumvent your Court Order once again. He chooses to stand above your Court. He states in his email of March 20, 2020, annexed herein as Exhibit A, that he refuses to serve me his Court filings by U.S. mail.

He writes,

"Please note that as I am working remotely due to the coronavirus, without support staff and with limited ability to print or mail documents, I will not be sending a hard copy of this document to you."

In response, Attorney Thomson's position is unacceptable. I could care less that Attorney Thomson is working from home. So am I. His office should be given no preferential treatment.

2. Attorney Thomson once again chooses to mispresent the facts to this Court.

In his letter to the Court dated, March 2020, annexed as Exhibit B. he writes:

"The State Defendants note for the record that, as evidenced by the email exchange attached as Exhibit 2, the pro se attorney Plaintiff appears to be receiving notice of docket filings electronically, despite his refusal to participate in the ECF filing system."

Attorney Thompson once again misrepresents facts to the Court. Abhorrent. I have not received electronic filings of any matters filed in my Complaint.

In response, because Attorney Thomson is refusing to serve his filings with this Court upon me by U.S. postal mail, I have had to call your Court Clerk at the pro se Office, at 718-613-2665, and your Court clerk has been kind enough to read to me any filings from the State Defendants made by Attorney Thompson. Attorney Thompson has not only imposed a burden upon me by having to make these phone calls but an unnecessary burden upon your Court clerk.

This conduct of the State's Attorney is reprehensible, not only does Attorney Thomson willfully defy your order that I be served by U.S. postal mail and not by electronic delivery, but he now misrepresents facts to this Court.

3. I am working from home but currently unemployed.

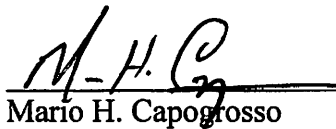
This letter motion is not frivolous. The internet costs money, and though I continue to work from home, I am currently unemployed. Because I am unemployed, and do not know long I will be unemployed due to the covid-19 virus, I may have to do away with certain household expenses, one of them being the internet, which costs money. Electronic service of the State Defendants' filings with the Court comes by such internet. Such is my position.

Therefore, I ask this Court that Attorney Thompson be made to obey the Court Order of J. Magistrate Bloom to mail me all filings with the Court by U.S. postal mail.

Further, I do seek sanctions, to reimburse me the cost of making this motion, that being the time, and labor needed to come to your Court, in light of the covid-19 virus, to file and serve this motion.

Dated: March 20, 2020
New Rochelle, New York

Respectfully truthfully stated and requested,



Mario H. Capogrosso

A

EXHIBIT A

From: nry4 <nry4@aol.com>

To: James.Thompson <James.Thompson@ag.ny.gov>

Subject: Re: Capogrosso v. Gelbstein, et al., No. 18 Civ. 2710 (EDNY) - Letter to Court Certifying Service

Date: Fri, Mar 20, 2020 2:00 pm

Keep this simple

Are you sending me a hard copy of the Court's last order - dated March 18, 2020.

If I do not get a hard copy within three days I will move the Court for Sanctions

I called the Court and they indicated that you have been ordered to serve me a hard copy of the Court's Order of March 18, 2020.

Serve the Order.

Your last email states "I **will not be** sending a hard copy of this document to you"

Serve the Order.

Mario H. Capogrosso

-----Original Message-----

From: Thompson, James <James.Thompson@ag.ny.gov>

To: nry4@aol.com <nry4@aol.com>

Sent: Fri, Mar 20, 2020 12:15 pm

Subject: Capogrosso v. Gelbstein, et al., No. 18 Civ. 2710 (EDNY) - Letter to Court Certifying Service

Dear Mr. Capogrosso,

Attached please find an electronic copy of a letter to the Court, certifying that I sent you a hard copy of the Court's March 18 Order, which you indicated that you had already received. Please note that as I am working remotely due to the coronavirus, without support staff and with limited ability to print or mail documents, I will not be sending a hard copy of this document to you.

Best,

James



James M. Thompson | Assistant Attorney General

New York State Office of the Attorney General, Litigation Bureau

28 Liberty Street, 17th Floor | New York, NY 10005

Tel: (212) 416-6556 | James.Thompson@ag.ny.gov

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer's Direct Dial: (212) 416-6556

March 20, 2020

Via ECF

The Honorable Lois Bloom
United States District Court for the Eastern District of New York
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Capogrosso v. Gelbstein, et al., No. 18 Civ. 2710 (EK) (LB)

Dear Judge Bloom,

Pursuant to the Court's Order dated March 18, 2020, Dkt. No. 118, attached as Exhibit 1 please find an affirmation of service, certifying that I sent a hard copy of Your Honor's Order to the *pro se* attorney Plaintiff by mail.

The State Defendants note for the record that, as evidenced by the email exchange attached as Exhibit 2, the *pro se* attorney Plaintiff appears to be receiving notice of docket filings electronically, despite his refusal to participate in the ECF filing system.

Respectfully submitted,

James M. Thompson
Assistant Attorney General
james.thompson@ag.ny.gov

Cc: All counsel of record (via ECF)

Mario Capogrosso (via email)
21 Sheldrake Place
New Rochelle, NY 10804

AFFIRMATION OF SERVICE

JAMES M. THOMPSON, an attorney admitted to practice in the State of New York and an Assistant Attorney General in the office of LETITIA JAMES, Attorney General of the State of New York, attorney for the State Defendants, affirms the following under penalty of perjury:

On March 19, 2020, I served a copy of the Court's Order dated the previous day (Dkt. No. 118) upon the Plaintiff, by depositing a true copy thereof, properly enclosed in a sealed, stamped envelope, in a mailbox located at Amsterdam Avenue and Cathedral Parkway, New York, NY, a depository under the exclusive care and custody of the United States Postal Service, directed to the Plaintiff at the address heretofore designated for that purpose, as follows:

**Mario Capogrosso
21 Shelldrake Place
New Rochelle, NY 10804**

Dated: New York, New York
March 20, 2020



JAMES M. THOMPSON

From: nry4@aol.com
To: [Thompson, James](#)
Subject: Re: Capogrosso v. Gelbstein, et al. No. 18 Civ. 2710 (EDNY)
Date: Thursday, March 19, 2020 3:32:24 PM
Attachments: [image006.png](#)
[image005.png](#)

Your motion has been denied.

I need a copy of Judges order of March 19, 2020 **mailed to me , via US mail** per the Court's last order.

Again I do not consent to electronic service.

Mario H. Capogrosso

-----Original Message-----

From: Thompson, James <James.Thompson@ag.ny.gov>
To: nry4@aol.com <nry4@aol.com>
Sent: Tue, Mar 17, 2020 5:54 pm
Subject: RE: Capogrosso v. Gelbstein, et al. No. 18 Civ. 2710 (EDNY)

Understood. We'll make our motion to the Court then.

Best,

James



James M. Thompson | Assistant Attorney General
New York State Office of the Attorney General, Litigation Bureau
28 Liberty Street, 17th Floor | New York, NY 10005
Tel: (212) 416-6556 | James.Thompson@ag.ny.gov

From: nry4@aol.com <nry4@aol.com>
Sent: Tuesday, March 17, 2020 5:03 PM
To: Thompson, James <James.Thompson@ag.ny.gov>
Subject: Re: Capogrosso v. Gelbstein, et al. No. 18 Civ. 2710 (EDNY)

[EXTERNAL]

No I do not agree.

Absolutely not.

She can stay in the car - she is not around anyone - until she gets to the Courthouse and then she can practice social distancing like the rest of us.

Gelbstein is older than she is and he is being produced.

Absolutely not.

I do not consent to moving the Court - Court has already ruled on this matter.

Mario H. Capogrosso

-----Original Message-----

From: Thompson, James <James.Thompson@ag.ny.gov>
To: nry4@aol.com <nry4@aol.com>
Sent: Tue, Mar 17, 2020 4:38 pm
Subject: Capogrosso v. Gelbstein, et al. No. 18 Civ. 2710 (EDNY)

Dear Mr. Capogrosso,

Ms. Traschen has asked me to reach out to you in order to see if you would be willing to take her deposition by remote means, pursuant to Federal Rule 30(b)(4), due to significant and valid concerns about exposing herself to the coronavirus when traveling to Brooklyn. Ms. Traschen is in her sixties and serves as the primary caregiver for her sister, who has a compromised immune system due to lupus. If she is required to travel to Brooklyn, she will be exposed to a significant number of people in traveling to the Courthouse and will need to self-quarantine prior to being in the same location as her sister, who she lives with.

Will you consent to having Ms. Traschen's deposition done remotely? Please let me know as soon as possible – ideally we would like to avoid a need to move the Court.

Best,

James



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New York State Office of the Attorney General, Litigation Bureau
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B

EXHIBIT B



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

Writer's Direct Dial: (212) 416-6556

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

March 20, 2020

Via ECF

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Respectfully submitted,

James M. Thompson
Assistant Attorney General
james.thompson@ag.ny.gov

Cc: All counsel of record (via ECF)

Mario Capogrosso (via email)
21 Sheldrake Place
New Rochelle, NY 10804

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**Mario Capogrosso
21 Shelldrake Place
New Rochelle, NY 10804**

Dated: New York, New York
March 20, 2020



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From: nry4@aol.com
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Subject: Re: Capogrosso v. Gelbstein, et al. No. 18 Civ. 2710 (EDNY)
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[image005.png](#)

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Mario H. Capogrosso

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James



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New York State Office of the Attorney General, Litigation Bureau
28 Liberty Street, 17th Floor | New York, NY 10005
Tel: (212) 416-6556 | James.Thompson@ag.ny.gov

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO

Plaintiff

-against-

ALAN GELBSTEIN, et. al

Defendants.

18 CV 2710

AFFIRMATION OF SERVICE

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the
attached Letters Motion Seeking an Order and Sanctions

upon:

James Thomson
(representing Defendants
Gelbstein, Traschen, Vahdat, Palmieri, Flanagan, Calvo,
and Prickett-Morgan)
Assistant Attorney General
28 Liberty Street
New York, NY 10005

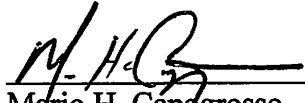
Sadiq Tahir
2994 Coney Island Avenue
Brooklyn, NY 11235

Pec Group of NY
935 S. Lake Blvd. #7
Mahopac, NY 10541

David Smart
2875 West 8th Street
Brooklyn, NY 11224

via U.S. Postal Service First Class Mail, this 20th day of Marh,2020.

March 20, 2020
New Rochelle, New York



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692